

(1920) 01 CAL CK 0017

Calcutta High Court

Case No: None

Fakhrunnessa Begam alias
Badsha Begam

APPELLANT

Vs

The District Judge of the
24-Pargunnas

RESPONDENT

Date of Decision: Jan. 2, 1920

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 92, 92(1)

Citation: 56 Ind. Cas. 475

Hon'ble Judges: Panton, J; N.R. Chatterjea, J

Bench: Division Bench

Judgement

1. The petitioner before us is the Mutwali of a Muhammadan endowment and she applied to the District Judge for sanction to grant a lease of a piece of land comprised in the endowment. The learned District Judge disallowed the application on the ground that it was necessary for the Mutwalli to bring a suit u/s 92 of the CPC with the consent of the Advocate-General.

2. We do not think it is necessary for the Mutwalli to institute a suit u/s 92 of the Code. Under the Muhammadan Law, a trustee is not entitled to let out immovable property for more than one year, or three years in certain cases, without the sanction of the Kazi. The powers of the Kazi are ordinarily exercised by the District Judge in the Mufasil and the sanction given by the District Judge on an application by the Mutwalli may be sufficient authority for the Mutwalli for letting out the property. The learned District Judge was of opinion that it was necessary to bring a suit u/s 92, Civil Procedure Code, in a case like this because Sub-section 2 of that section provides that " Save as provided by the Religious Endowments Act, 1863, no suit claiming any of the reliefs specified in Sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section."

3. That evidently relates to a suit claiming any of the reliefs specified in Sub-section (1). But the present application for sanction is not a suit under Sub-section (1) of Section 92. We may refer to a passage in Amir Ali's Muhammadan Law, 4th Edition, page 480, where the learned Author says: "The application for sanction should be made to the District Judge if the property is situated in the Mufassil or to the Judge on the Original Side of the High Court if it is within a presidency town. It is not necessary to bring a suit for obtaining such sanction; it will be granted upon a proper application being made by the Mutwalli. If there are Nazire, their consent should be obtained as a condition precedent to the application. If the wakf is of a public nature, notice should be given to the beneficiaries in any mode the Judge directs either by advertisement in newspapers or by posting it up at the institution to which the wakf property belongs,"

4. Any application made by the Mutwalli will, of course, be inquired into by the District Judge before sanctioning a lease as Kazi, and the manner in which the inquiry may be made is indicated above.

5. We are accordingly of opinion that the order of the Court below must be set aside and the case sent back to the learned District Judge in order that he may enquire into the merits of the application and dispose of it according to law.

6. Let the record be sent down without delay.